labor—all are findings of fact by the trial Court which are decisive in this case and are binding in this appeal.

II.

In view of the District Court's Memorandum of Opinion, it is impossible to consider its judgment without a study and understanding of the whole record including the evidence.

It is not only the District Court and the defendants who discuss evidence as well as pleadings and statute. Appellant in its own Statement does likewise. On page 8 thereof, discussing the *Kemble* case (*United States vs. Kemble*, 197 F. 2d, 889) *appellant refers to the conduct of defendants here as being the very same kind as that of Kemble.* Again on page 10, appellant adverts to the *Local 807* case (U.S. vs. Local 807, 315 U.S. 521) in connection with defendants here in these words, ". . . conduct like that involved in the Local 807 *and here*" (Emphasis added). And at the end of its discussion on page 13, continuing its reference to the Kemble case, and referring again to the facts of evidence in the instant case, appellant adds, "In its contrary ruling on the substantially *similar facts* of this case, the decision below is incorrect." (Emphasis Added.) Finally, with reiteration of quotations from the Congressional Record of debate on the Bill, appellant places emphasis upon hypothetical facts, far fetched in regard to the instant case, and concludes even its footnote (P. 13 of Statement as to Jurisdiction) with a further repetition of the refrain; "obstruction by force and violence."

The Kemble case itself, indeed, was decided not upon the face of the record at all but solely upon a review of the evidence. There the defendants raised no question whatsoever of the validity or sufficiency of the indictment. As appellant points out in its Statement as to Jurisdiction (P.

LIBRARY
SUPREME COURT U. S.

No. 54

MAY 25 1955
HAROLD B. WILLEY, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1954

UNITED STATES OF AMERCIA,

Appellant,

v.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, a Labor Union and Voluntary Association of Workingmen affiliated with INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION

MOTION BY APPELLEE TO DISMISS FOR WANT OF JURISDICTION

STATEMENT IN SUPPORT THEREOF

A. M. FITZGERALD,
908 Ridgely Bldg., Springfield, Illinois

SCHAEFER O'NEILL,
Alton, Illinois

Attorneys of Record for Appellees.

SCHNEP[illegible] & BARNES, P[illegible] RS, SPRINGFIELD, IL

inal Appeals Act does not authorize review . . ."
(Emphasis added).

Again in *United States vs. Hastings*, 296 U.S. 188, in which the United States appealed from an order of the District Court for the Northern District of Mississippi sustaining a demurrer to an indictment, this Court, through Mr. Chief Justice Hughes, again referring to the Memo of Opinion of the District Court, said:

> "Mr. Chief Justice Hughes: 1. *The jurisdiction of this Court.* If the first four grounds of the decision, as stated in the certificate of the District Judge, are to be taken as wholly independent of the questions of the construction and validity of the United States Warehouse Act, those grounds may not be challenged on this appeal. The statute conferring jurisdiction on appeal by the Government in criminal prosecutions confines that jurisdiction to cases where the decision of the District Court, on demurrer, motion to quash or in arrest of judgment, 'is based upon the invalidity or construction of the statute upon which the indictment is founded,' or where the District Court has sustained 'a special plea in bar, when the defendant has not been put in jeopardy,' . . .
>
> "It was in the light of the considerations governing the exercise of the judicial power that the Criminal Appeals act was enacted and appeals by the Government were subjected to the prescribed limitations. . . . We think that the provision which limits the Government's appeal to those cases where the decision or judgment of the District Court is '*based*' upon the invalidity or construction of the statute, should be taken to refer to cases where that determination, and not a wholly independent ground, is the foundation of the judgment . . ."

Because of the nature of the statute and indictment in this case, wholly aside from any question of the sufficiency of the indictment and even it it were to be conceded that

Page

United States vs. Hastings, 296 U.S. 188 10

United States vs. Kemble, 197 F. 2d 889 ..... 5, 6, 7, 14

United States vs. Local 807, etc., 315 U.S. 521 ..... 5, 15

United States vs. McClone, 197 Fed. Supp. 285 14

United States vs. Taylor, 147 U.S. 695 3

United States vs. Waters, 175 Fed. 2d. 340; Dis. on Mo. App't., 355 U.S. 869 8

United States vs. Wayne Pump Co., 317 U.S. 260 9

United States vs. Zisblatt, 172 Fed. 2d. 740 8

Statutes:

Copeland Act, 48 Stat. 979; 18 U.S.C. § 420(a) 420(c) and 420(d) 14, 15, 16

Criminal Appeals Act, 62 Stat. 844; 18 U.S.C. § 3731 ..... 9, 11, 12

Hobbs Act, 62 Stat. 793; 18 U.S.C. 1951 ..... 1, 15, 16, 19, 20

Lea or Petrillo Act, 60 Stat. 89; 47 U.S.C. § 506 ..... 19, 20

Taft-Hartley Act, 61 Stat. 140; 29 U.S.C. § 158 20

Miscellaneous:

Appellant's Statement as to Jurisdiction 3, 5

Appendix to Appellant's Statement (District Court's Memorandum of Opinion) 4, 19

91 Cong. Rec. 11900 17

91 Cong. Rec. 11903 17

91 Cong. Rec. 11905 18

91 Cong. Rec. 11906 18

	Page
91 Cong. Rec. 11908	17, 18
91 Cong. Rec. 11912	17
91 Cong. Rec. 11913	18
93 Cong. Rec. 6441	21
S. 2248, 78 Cong. Rec. 457; 73rd Cong. Rec. 2nd Sess.	15
Supreme Court Rule 12(2)	3

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1954

No. _____

UNITED STATES OF AMERICA,

Appellant,

v.

JACK GREEN AND GENERAL LABORERS' LOCAL NO. 397 OF GRANITE CITY, a Labor Union and Voluntary Association of Workingmen affiliated with INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABORERS UNION OF AMERICA.

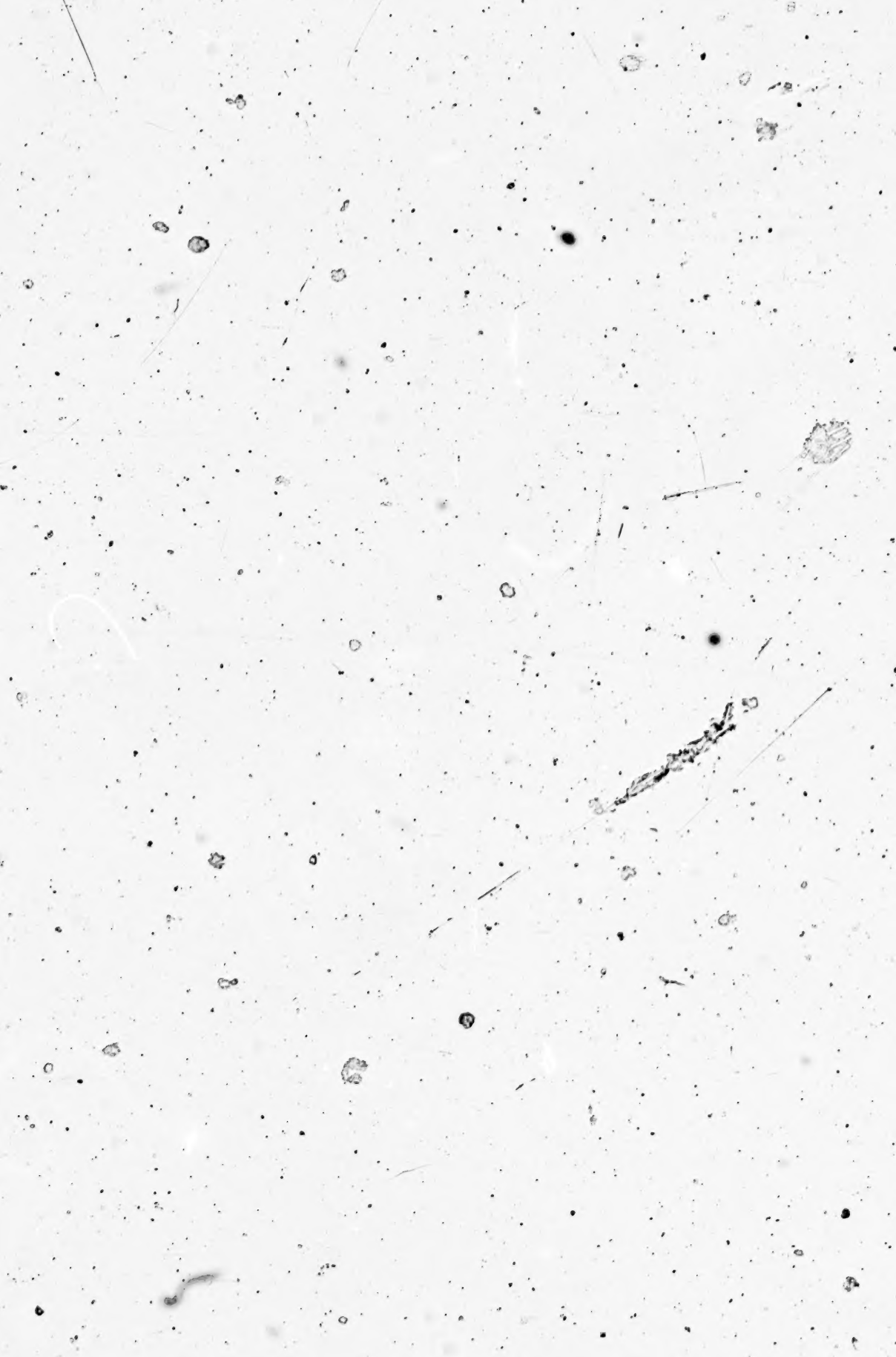
APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS, SOUTHERN DIVISION

MOTION TO DISMISS

Now come appellees above named, by their attorneys, A. M. Fitzgerald and Schaefer O'Neill, and move the Court to dismiss the appeal herein for the following reasons:

1. The Supreme Court is without jurisdiction for the reason that the District Court's decision is based not only on its interpretation of the indictment under the Hobbs Act (18 U.S.C. 1951) but also on its findings and conclusions concerning the evidence.

2. In view of the District Court's Memorandum of Opinion, it is impossible to consider its judgment without a study and understanding of the whole record including the evidence.



8 thereof) in regard to the case the Circuit Court of Appeals said:

> "It is enough for this case, and all we decide, that payment of money for imposed, unwanted and superfluous services *such as the evidence shows* Kemble attempted to enforce here by violent obstruction of commerce is within the language and intendment of the statute." (Emphasis added.)

Now, as opposed to such findings of the Appellate Court in the *Kemble* case is the specific finding of the District Court which tried the present case that—

> "I conclude that the trouble in this community and on this particular job was caused by a disagreement between contractor and labor, and was in no wise an attempt to extort . . ."

By these two quotations, both dealing with facts in evidence, the issue raised by this Motion to Dismiss on the ground that the District Court's order was based not only upon the insufficiency of the indictment under the Court's interpretation of the statute above, but also upon findings and conclusions from the evidence, is highlighted. This is further emphasized by the following statement of Appellant (P. 8 of Statement as to Jurisdiction):

> "Thus, the decision below, (referring to the decision in the instant case) exonerates appellees from liability for the *very same kind of conduct* as that which resulted in imprisonment for Kemble. In the interests of equal justice, the contrariety of views between the Third Circuit, and the Court below, should be resolved by this Court." (Emphasis added.)

If this Court could review the evidence in this appeal as the Circuit Court of Appeals did in that case, such a resolution might be made and appellees would themselves adopt appellant's view that it could.

But by what process of reasoning the appellant can argue

a "contrariety of views" between a judgment reviewed on the evidence in the *Kemble* case, and a judgment which it contends was based on the pleadings and the common law record only in this case, is difficult to understand unless, of course, appellant is willing to concede that the contentions of appellees as set forth in this Motion to Dismiss are correct, and that the judgment of the District Court in this case actually is a judgment on the evidence as well as upon pleadings. If so, of course, appeal does not lie to this Court.

In presenting this appeal, indeed, the government is in an anomalous position. It seeks to establish jurisdiction *for the appeal* by treating the Court's order in the strict sense as an arrest of judgment as at common law, but in its statement in support of direct appeal promptly departs from that limited sense to discuss (as though the order were what we believe it was in substance, namely, a judgment non obstante veredicto) evidence which is not before this Court, and, in these proceedings, can not be before it under the Appeals Statute (See discussion under Part III of this Statement).

It should be pointed out in passing moreover that, upon reviewing the evidence in the *Kemble* case, the Circuit Court of Appeals reversed the conviction of the defendant Union, and that there was a sharp division, supported by vigorous dissenting opinion, as to the propriety of allowing the conviction even of Kemble to stand.

But this much is perfectly clear, that the *conduct of the appellees*, as found by the District Court here, and the *conduct of Kemble*, as set forth in the case cited, were decidedly not "*the very same kind of conduct*"; and this Court should not be asked, on the pleadings in this case to affirm as to law on the facts of another.

III.

The judgment of the District Court was not an order in arrest of judgment but was in effect a judgment non obstante veredicto, based upon the Court's consideration of the evidence.

It has long been the practice of the Supreme Court to consider a matter of the record not according to mere designation but according to substance; not simply as it may be named but as it has effect; and particularly is this true under the Appeal statute.

Thus a motion to quash had been construed to be a plea in bar.

United States vs. Hark, 320 U.S. 531;
United States vs. Zisblatt, 172 Fed. 2d. 740 (742);
United States vs. Grainger, 346 U.S. 235.

In the *Hark* case above cited, Mr. Justice Roberts said:

> "The material question is not how the defendants pleading is styled but the effect of the ruling sought to be reviewed."

A plea in abatement has been treated as a plea in bar.

United States vs. Barber, (1910) 219 U.S. 72.

And an order granting a motion for judgment of acquittal, where only the indictment under the statute was construed, has been ruled to be in fact an order arresting judgment.

United States vs. Waters, 175 F. 2d. 340 (Transferred to Supreme Court where it was dismissed on Motion of Appellant—335 U.S. 863).

When, therefore, the District Court entered an order which, although denominated an order arresting judgment, was based, as the Memorandum of Opinion clearly shows, not on items of the common law record of itself, but also

upon the Court's view of and conclusions from the evidence, it became in substance and effect a judgment of not guilty notwithstanding the jury's verdict. Whatever the order's designation may be, as it was based upon the court's view of the evidence, and in effect overruled the verdict of the jury, it is not a mere arrest of judgment but is, in substance, a judgment *non obstante verdicto* . . . From such a judgment there is no direct appeal to this Court.

In fact, the Court has ruled in case after case that where the judgment of the District Court is based upon any ground independent of the grounds stated in the Appeals Statute (Tit. 18 § 3731, USC) the Court will not take jurisdiction, and this is true even though one of the reasons, such as that given by the District Court here, would be, if standing alone, a ground for direct appeal.

Thus, in *U. S. vs. Wayne Pump Co.*, 317 U.S. 200, this Court, through Mr. Justice Reed, referring to the District Court's Memorandum of Opinion, said:

> "There is disagreement between the parties as to whether the District Court sustained the demurrers on the ground of the deficiency of the pleadings as well as upon a construction of the statute. The *language of the opinion* makes it apparent to us that the district court's conclusion was at least in part bottomed upon the indefiniteness, uncertainty and lack of specificity of the indictments . . .
>
> "In the *light of the opinion*, however, we conclude that the judgment upholding the demurrer was based on grounds independent of the construction of the statute involved . . . The excerpts *from the opinion quoted are conclusive*; we think, that the district court rested its ruling on the insufficiency of the pleading as an independent ground.
>
> "Since the judgment below was not placed solely upon the invalidity or construction of the statute but had an additional and independent ground, the Crim-

the indictment is good under the statute, we would observe that an examination of the evidence is still absolutely necessary to a proper resolution of this case. Assuming for the sake of argument, therefore, that the appellant's contention with respect to the indictment is correct and that the question posed by appellant as far as the indictment goes is proper, the real question at issue nevertheless could not and cannot be determined either by passing upon the indictment or by answering the question.

For the statute here is in two main parts, one defining the offense and the other limiting its scope. Under such a statute, following the principle laid down in such cases as that of *United States vs. Cook*, 17 Wall. 168 (1872), the exception, proviso or limitation need not be negated in the indictment but remains nevertheless as a matter to be shown in defense. Yet, since nothing need be alleged in the indictment concerning it, neither an order sustaining a motion to dismiss or (which amounts to the same thing) an order in arrest of judgment goes necessarily to the defensive matter; and whether acts charged and proven or assumed to be proven are within the defensive provision of the statute can only be ascertained from examination of the evidence. Such an examination the District Court in this case made and, from it, determined that the defendants on the evidence are within the defenses; that they committed no crime; that there is not even any attempt to extort.

Since the matter of defense under the statutory provision was not covered by the indictment and, upon the assumption stated before, need not be in order to have a proper indictment under a statute drawn as this one is, to permit the issue now to be resolved only upon the indictment and the statute, excluding consideration of the evidence, would be, in effect, for this Court by judicial fiat under a strained construction of the Appeals Statute (18

U.S.C. 3721) to eliminate the provisions of paragraph (c) of the statute altogether, giving it a scope which Congress not only has not given it but has explicitly refused to give it. It would do violence also to two fundamental rules of statutory construction, namely, (1) that a criminal statute must be strictly construed against the pleader (*United States vs. Halseth*, 342 U.S. 277) and (2) that all parts of a criminal statute must be read together (*Alexander vs. The Mayor, etc. of Alexandria*, 9 U.S. 1).

As stated in the recent case of *Morissette vs. United States*, 342 U.S. 246 (1953):

> "The spirit of the doctrine which denies to the federal judiciary power to create crimes forthrightly admonishes that we should not enlarge the reach of enacted crimes by constituting them from anything less than the incriminating components contemplated by the words used in the statute."

The appellant's question, under the circumstances, is hypothetical only and does not cover the defensive question involved. A demurrer to this indictment would not reach it.

The incriminating components of the statute here are "robbery" and "extortion" affecting interstate commerce. They are made to constitute a severe felony. Force, violence, threats of the same and fear resulting therefrom do not stand alone in this statute. Almost universally treated as mere misdemeanors when standing alone, they take on the seriousness of a felony only as components of the crimes of "robbery" and "extortion". The indictment here was drawn under the "extortion" element of the crime defined by the statute. As between the statutory definition of extortion and the common law description of robbery there is no essential difference in so far as the wrongful use of actual or threatened force, violence or

fear is concerned; in the one case, the taking must be from the person or in the presence of the alleged victim but essentially the very same kind of acts may cause the subject to consent to part with his property although not in the actual presence of the aggressor. When the latter is true, it is extortion. But in both, the taking as well as the means of taking must be wrongful.

Thus in the case of *United States vs. Durkee*, 25 Fed. cases 841, decided in 1860, the Court, defining robbery as it was at common law at the time of the separation from England, said:

> "In robbery, which is larceny accompanied by intimidation or force, the felonious intent in taking constitutes the offense."

Any effort by legitimate union means to obtain legitimate union work for legitimate union wages, therefore, is beyond the scope of this statute not only because of the limiting provisions of paragraph (c), but also because of the definite scope of the enacting clause itself. Yet again, in order to determine whether the District Court properly interpreted the evidence in arriving at its decision to that effect, that evidence must be examined by the reviewing court, which this court on direct appeal is without jurisdiction to do.

There is no Uncertainty Requiring Plenary Consideration

Finally, there is no urgency or uncertainty requiring plenary consideration by this court. That the statute does not embrace a fact situation such as this court has found existed here is clearly shown (a) by all the cases heretofore described under the Act, (b) by its legislative history, and (c) by statutes in *pari materia*.

(a). From the case of *United States vs. McClone*, 19 Fed. Supp. 285 (1937), to that of *United States vs. Kemble*, (1952) cited and stressed by appellant, no case has been found under this statute finally adjudging a defendant guilty except where "robbery" or "extortion" was the gist of the offense. None involved the obtaining of money or other thing of value for a lawful purpose but only for an unlawful one within the common law meaning of the term. In the *Kemble* case, which goes further than any other, money was sought and obtained for services neither performed nor to be performed; the victim was not even approached until the work being done had been virtually completed so that the doing of work for the money demanded was *ipso facto* impossible in that case.

See also *United States vs. Bioff*, 40 F. Supp. 497;
Nick vs. United States, 122 F. 2d. 660; cert. denied 314 U.S. 687;
United States vs. Campagna, 146 F. 2d. 524; cert. denied 324 U.S. 867;
Ladner vs. United States, 168 F. 2d. 771; cert. denied 335 U.S. 327.

The correctness of the District Court's decision that on the evidence, defendants here were not guilty under the Act can only be adjudged by examining the evidence; it cannot be determined upon the face of the common law record alone. And it cannot be determined by answering appellant's hypothetical question.

(b). Legislative history of the Act explicitly establishes the scope of it as intended by Congress. In its present form, the Act was developed from the Protection of Trade and Commerce Act, commonly known as the Copeland Act, of 1934. Although as first enacted, it did not specify either "robbery" or "extortion" in terms as such, it contained

language descriptive of the offenses proscribed, essentially the same as that used in the Hobbs Amendment of 1946 in defining these words. Originally introduced in 1933 following a Senate investigation of racketeering, in the draft first approved by the Senate (S. 2248, 78 Cong. Rec. 457, 73d Cong., 2nd Sess.), general prohibitions against violence and coercion, affecting commerce were included. In recognition of the fact, however, that in such form, it might do serious harm to labor in recognized legitimate activities, the bill was redrafted and the final draft received full support from organized labor as a whole. (*United States vs. Local 807 etc.*, 315 U.S. 521)

In this first Act, although the words "robbery" and "extortion" were not used, the following language was embodied (48 Stat. 979; 18 U.S.C. Secs. 420 (c) 420 (e)):

> "Any person who in connection with or in relation to any act in any way or in any degree affecting trade or commerce or any article or commodity moving or about to move in trade and commerce . . .
>
> (a) Obtains or attempts to obtain, by use of or attempt to use or threat to use force, violence, or coercion, the payment of money or other valuable considerations, or the purchase or rental of property or protective services, not including, however, the payment of wages by a bona fide employer to a bona fide employee; or
>
> (b) Obtains the property of another with his consent, induced by wrongful use of force or fear, or under color of official right; or
>
> (c) Commits or threatens to commit an act of physical violence or physical injury to a person or property in furtherance of a plan or purpose to violate sections (a) or (b); or

Obviously, therefore, from the very first enactment of the bill, force, violence and threats thereof were not offenses under this Act except when they were components

of the crimes defined in (a) or (b) above,—"robbery" and "extortion" essentially.

At the same time, as Section 6 of the original Act, the following was passed:

> "Provided, that no court of the United States shall construe or apply any of the provisions of this Act in such manner as to impair, diminish, or in any manner affect the rights of bona fide labor organizations lawfully carrying out the legitimate objects thereof, as such rights are expressed in existing statutes of the United States."

For more than ten years racketeers, including labor racketeers, were presented with success under the Act in such form and it was considered to be satisfactory until the Local 807 case. In 1946, as a result of the decision in that case the Hobbs Act was passed, amending and revising the statute, removing from it the provision in regard to "payment of wages by a bona fide employer to a bona fide employee," and in other respects rewriting it. For the first time, the words "robbery" and "extortion" were put into the Act; elements of the previously existing definitions, such as that respecting "the purchase of rental of property or protective services," in paragraph 420(a), not consistant with the common law definition of "robbery," were eliminated; and Section 6 (48 Stat. 979; 18 U.S.C. § 420(d) of the original act was replaced by paragraph (c) of the present Act. In other words, greater emphasis was placed upon "robbery" and "extortion" than the earlier version had contained. The object of these changes appears to be clear from the wording of the Act; it was for the purpose not of writing an anti-labor bill, but of strengthening an anti-racketeering Act. But plain as the statutory language now is, the fact that that was the intention of Congress is made even plainer by the reports of the House debates (the

matter was not debated in the Senate) Vol. 91 of Cong. Rec. 11899-11922, 79th Cong. 1st Sess.

Thus Representative Hobbs himself, at P. 11912:

> "Mr. Chairman, I want to make it perfectly clear that the sole and simple purpose, the single purpose of this bill is to do the best we can to protect interstate commerce and free the highways and streets of this country of robbers."

Representative Gwynne, one of its chief proponents, P. 11903:

> "Here is what a prosecutor would need to allege and prove to get a conviction under this law if this bill becomes law:
>
> "First, they would need to prove that the activity complained of in some way affected interstate commerce; second, they would have to prove that there was an actual, not a theoretical taking of personal property; third, they would have to prove that the taking was by violence, or by actual threats of personal violence; and then, fourth, they would have to prove that the acts done—*they might be violent; they might take something*, but the Government would have to prove in addition that the acts done did not come within the exceptions set out in Title III." (Emphasis added.)

Representative Walter at P. 11908:

> "Our distinguished colleague from Iowa pointed out the elements that it would be necessary to prove in order to make out a crime and I call the gentleman's attention to the fact that a mere threat does not constitute a crime. There must accompany that threat an unlawful taking."

Representative Hancock, at P. 11900:

> "This bill is designed simply to prevent both union members and nonunion people from making use of robbery and extortion under the guise of obtaining wages in the obstruction of interstate commerce. That is all it does."

Representative Vursell, at P. 11908:

"Mr. Chairman, this act seeks to do only one thing—to strengthen the law against robbery and extortion. You can't read anything more into it. It should be passed by a unanimous vote."

Representative Robison, at P. 11905:

"I wish to reiterate that I cannot believe that a bill denouncing robbery and extortion can or will interfere in any way with the legitimate purposes and aims of labor."

Representative Summers, at P. 11908:

"'. . . as I can understand this bill, there is not a thing in it to interfere in the slightest degree with any legitimate activity on the part of labor people or labor unions, unless somebody thinks it is legitimate for them to rob and extort. If that is their notion, then this bill covers that activity."

Representative Whittington, at P. 11913:

"It punishes extortion and robbery no matter by whom committed. . . ."

Representative Robison, at P. 11906, summarizing:

"This bill merely makes clear robbery and extortion. . . . So it is up to the Government to prove, beyond a reasonable doubt, that the person charged under this anti-racketeering bill has committed either robbery or extortion before such person can be convicted."

Thus, whether or not Representative Gwynne and his colleagues were technically correct as to what the Government would have to prove; whether they distinguished between matters of allegation and proof under an indictment, on the one hand, and matters by way of defense under provisions of the statute, on the other, they were in complete accord on this, that the statute was aimed where it says it is aimed, at "robbery" and "extortion" affecting interstate commerce. Neither the specific inclusion of the words "robbery" and "extortion," their explicit definition nor

the provisions of paragraph (c) in reference to other Acts affecting labor were intended to be meaningless. The Act itself was not intended to proscribe lawful labor activities such as the District Court, in his Memorandum of Opinion, has found to have been embodied here, a fact which be determined by weighing the evidence against the Act, and which can be justly and properly determined in no other way.

(c) Finally, statutes in *pari materia* show that this was the intent of Congress. In the same year, 1946, that Congress enacted the Hobbs amendment, it also passed the Lea Act (47 U.S.C. § 506) also called the Petrillo Act. This Act reads, in so far as pertinent here, as follows:

> "(a) It shall be unlawful, by the use of express or implied threats of the use of force, violence, intimidation, or duress, or by the use of express or implied threat or the use of other means, to coerce, compel or constrain or attempt to coerce, compel, or constrain a licensee—
>
> (1) to employ or agree to employ, in connection with the conduct of the broadcasting business of such licensee, any person or persons in excess of the number of employees needed by such licensee to perform actual services; or
>
> (2) to pay or give or agree to pay or give any money or other thing of value in lieu of giving, or on account of failure to give, employment to any person or persons, in connection with the conduct of the broadcasting business of such licensee, in excess of the number of employees needed by such licensee to perform actual services; or
>
> (4) to pay or give or agree to pay or give any money or other thing of value for services in connection with the conduct of the broadcasting business of such licensee, which are not to be performed."
>
> (d) Whoever willfully violates any provision of subsection (a) or (b) of this section shall, upon con-

viction thereof, be punished by imprisonment for not more than one year or by a fine of not more than $1,000.00 or both . . ."

The Lea Act became law on April 16, 1946; the Hobbs Act, on July 3, 1946, less than three months later.

In passing these acts, was it the intention of Congress that for the very same offense for commission of which a musician might be fined no more than $1,000.00 or imprisoned for not more than one year or both, a common laborer should be fined up to $10,000.00, or imprisoned up to twenty years, or both? Or, in passing the Hobbs Act was Congress with respect to Interstate Commerce, aiming at robbery and extortion in the ordinary, well recognized meaning of the terms? Not at the activities of a labor organization or its business agent in seeking to carry out, and have local contractors carry out, the customary and, in this case, the contractual obligations of the Union and such contractors generally in the community?

Again in 1947, by enacting the Labor Management Relations Act commonly known as the Taft-Hartley Act, Congress amended section 8(b)(6) of the Labor Relations Act, (29 U.S.C. 158). This Section is embraced within the provisions of paragraph (c) of 18 U.S.C. Sec. 1951, the Hobbs or Anti-racketeering Act, which was reenacted, for the purposes of inclusion in the Code, on June 25, 1948.

As finally enacted the Act contained, respecting this matter, the following language only:

"Sec. 8.

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction,

for services which are not performed or not to be performed. . . .'"

In connection with this change, Senator Taft made the following statement on the Senate floor:

"'There is one further provision which may possibly be of interest, which was not in the Senate bill. The House had rather elaborate provisions prohibiting so-called feather-bedding practices and making them unlawful labor practices. The Senate conferees, while not approving of feather-bedding practices, felt that it was impracticable to give to a board or a court the power to say that so many men are all right, and so many men are too many. It would require a practical application of the law by the courts in hundreds of different industries, and a determination of facts which it seemed to me would be almost impossible. So we declined to adopt the provisions which are now in the Petrillo Act. After all, the statute applies to only one industry. Those provisions are now the subject of court procedure. Their constitutionality has been questioned. We thought that probably we had better wait and see what happened, in any event, even though we are in favor of prohibiting all feather-bedding practices. However, we did accept one provision which makes it an unlawful-labor practice for a union to accept money for people who do not work. That seemed to be a fairly clear case, easy to determine, and we accepted that additional unfair labor practice on the part of unions, which was not in the Senate bill.'" 93 Cong. Rec. 6441. See also, his supplementary analysis inserted in the Record June 12, 1947. 93 Cong. Rec. 6859."

Obviously, therefore, in enacting these statutes in *pari materia* Congress had no thought or belief that the Hobbs Act covered labor activities such as those which the District Court found to exist in this case. The existence of the facts referred to by the District Court can only be determined from the evidence. In so finding, the District

Court was correct in the result reached, whether properly designated as an order in arrest or not. Since the facts can only be ascertained from a review of the evidence, treating the order as in substance a judgment *non obstante veredicto* as we believe it must be, this court is without jurisdiction on direct appeal.

CONCLUSION

The motion to dismiss in this case is filed on the assumption, based upon a long line of cases, that the Supreme Court will not re-try a case on direct appeal; that the District Court's order and Memorandum of Opinion are so involved with the evidence as well as the mere common law record that, in order to arrive at a correct decision under the circumstances existing, this Court would have to do likewise but that, under the Appeals Statute, it is without jurisdiction so to do.

Respectfully submitted,

A. M. Fitzgerald,
908 Ridgely Bldg., Springfield, Illinois

Schaefer O'Neill,
Alton, Illinois

Attorneys of Record for Appellees.